In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.3098 of 2006.

Date of decision:26.9.2006.

State of Haryana and others.

...Appellants.

Versus

Ram Karan and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Deepak Kaushal, Additional Advocate General, Haryana.

...

Judgment.

S. N. Aggarwal, J.

Maha Singh, Satbir Singh and Ishwar Singh respondents applied to the canal authorities for sanction of a water course. This application was accepted and Khal was allowed to be dug through the land of Ram Karan, respondent. Ram Karan filed an appeal/revision to the higher canal authorities but with no success. Hence, he filed civil suit for a declaration with consequential relief of permanent injunction against the canal authorities as well as private respondents who were beneficiaries.

The said suit was contested by the appellants and the private respondents.

The suit was dismissed by the learned trial Court vide judgment and decree dated 6.12.2003.

Ram Karan filed an appeal. The learned Lower Appellate Court set aside the findings of the learned trial Court and accepted the appeal vide judgment and decree dated 13.5.2006.

Hence, the present appeal.

It was admitted by the learned State counsel that the impugned order was passed by the canal authorities without hearing Ram Karan,respondent/plaintiff who was affected. The learned Lower Appellate Court although set aside the order but has given liberty to the canal authorities to pass a fresh order. The operative part of the order of the learned Lower Appellate Court reads as under:-

> "In view of the aforesaid discussion and the legal position, it is held that the learned Civil Court fell into error in passing the impugned judgment vide which the suit filed by the plaintiff-appellant was dismissed which deserved to have been decreed. Accordingly, the impugned judgment is set aside by accepting the appeal. The net result is that the orders dated 30.9.1997, 19.1.1998 and 4.8.1998 (Copies Ex. D1, Ex.D2, Ex.D3) passed by the canal authorities are held to be illegal, null and void. The divisional canal officer is directed to pass a fresh order after inviting objections and

giving opportunity of hearing to the parties concerned before deciding the application by respondents No.6 to 8 for providing a Khal. The parties are left to bear their own costs."

Since the impugned order was passed by the canal authorities without hearing Ram Karan respondent who was affected by these orders, therefore, the learned Lower Appellate Court has rightly set aside those orders but at the same time the learned Lower Appellate Court has granted liberty to the canal authorities to pass fresh orders after hearing the interested parties. Therefore, the impugned judgment does not call for any interference.

No merit.

Dismissed.

September 26,2006. (S. N. Aggarwal)
Jaggi Judge